

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA**
Pittsburgh Division

**IN RE: PHILIPS RECALLED CPAP, BI-
LEVEL PAP, AND MECHANICAL
VENTILATOR PRODUCTS LIABILITY
LITIGATION,**

This Case Refers to:

King v. Koninklijke Philips N.V., et al.
Case No. 2:23-cv-02040

Master Docket: Misc. No. 21-1230

MDL No. 3014

Judge **JOY FLOWERS CONTI**

**PRO SE PLAINTIFF DERRICK MARTIN KING'S MOTION TO CONVERT JUNE 20,
2024 STATUS CONFERENCE TO A REMOTE VIDEOCONFERENCE AND ALLOW
THOSE PLAINTIFFS WHO OBJECT TO THE PROPOSED MASTER SETTLEMENT
AGREEMENT FOR PERSONAL INJURIES TO PARTICIPATE AT THE REMOTE
VIDEOCONFERENCE**

Now comes the *pro se* Plaintiff Derrick Martin King and he respectfully moves this Honorable Court for the entry of an Order which: (1) converts the June 20, 2024 status conference into a remote videoconference; (2) allow any Plaintiff and their counsel who have filed objections to the proposed master settlement agreement for personal injury claims to participate in the videoconference.

In support of the motion, Plaintiff King states as follows:

1. On November 9, 2023, this Court entered the Second Amended Pretrial Order # 12¹, which sets the dates and times of the monthly status conferences for the remainder of 2023 and 2024.
2. The next scheduled conference is June 20, 2024 at 11:00 a.m..²

¹ ECF No. 2336.

² Id.

3. The Order stated that “subject to any limitations imposed by reason of future COVID-19 restrictions, the above-scheduled status conferences shall be held in person at the Joseph F. Weis, Jr. United States Courthouse, 700 Grant Street, Pittsburgh, Pennsylvania 15219”³.

4. On May 9, 2024, Plaintiffs leadership and the Phillips Defendants filed a joint notice⁴ announcing a personal injury master settlement agreement (hereinafter “MSA”) to resolve certain personal injury claims (while other personal injury claims will be excluded from the settlement).⁵

5. The MSA (ECF No. 2768-1) makes the following definitions:

Eligible Claimant means a United States Citizen or Resident who, as of the applicable Identification Order Declaration Deadline, alleges a Qualifying Injury caused by their use of one or more Recalled Devices and/or any asserted defects, delays or inadequacies relating to the Philips RS recall programs, and either (i) retained counsel on or before April 29, 2024 and is included on an Identification Order Declaration alleging a Qualifying Injury by the applicable Identification Order Declaration Deadline, or (ii) is a *pro se* plaintiff who has filed a Personal Injury Claim or Claims in the MDL Court or Massachusetts Court alleging a Qualifying Injury or submits an Identification Order Declaration alleging a Qualifying Injury by the applicable Identification Order Declaration Deadline.⁶ (emphasis original)

Ineligible Claimant means anyone who is not an Eligible Claimant. An Ineligible Claimant is not entitled to participate in or receive any benefits under the Settlement or the Program unless both Plaintiffs’ Negotiating Counsel and the Philips Defendants agree to deem that person an Eligible Claimant (*e.g.*, allowing for the untimely submission of an Identification Order Declaration and/or an untimely submission of a Registration), in which case that person will be considered an Eligible Claimant for all purposes.⁷ (emphasis original)

³ *Id.* at 2.

⁴ ECF No. 2768.

⁵ The MSA is in the record as ECF No. 2768-1.

⁶ ECF No. 2768-1 at 4.

⁷ *Id.* at 4.

6. The MSA defines Qualifying Respiratory Injury and Qualifying Cancer as the following:

Qualifying Respiratory Injury means, as demonstrated through proof of diagnosis or treatment, respiratory impairment (*e.g.*, new or worsening asthma, new or worsening COPD, chronic bronchitis, bronchiectasis, sarcoidosis, acute respiratory distress syndrome, reactive airways dysfunction syndrome, pulmonary fibrosis, pneumonitis, other interstitial lung disease, other obstructive or restrictive lung disease).⁸ (emphasis original)

Qualifying Cancer means one of the following, as demonstrated through proof of diagnosis or treatment: lung cancer; certain blood cancers (acute myeloid leukemia (AML), chronic myeloid leukemia (CML), or mucosa associated lymphoid tissue (MALT) of the air-pathway lymphoid tissue); or ENT/pathway cancers (*e.g.*, oral cavity cancers; oropharynx cancer; nasal cavity/sinus cancer; nasopharynx cancer; larynx cancer; hypopharynx cancer; salivary cancer; esophageal cancers; thyroid cancers). (emphasis original)

7. At the parties' request, this Court entered certain Orders.

8. On May 20, 2024, Plaintiff King filed a motion to reject the MSA.⁹

9. Since the announcement of the proposed MSA, other plaintiffs have filed objections to the MSA for varying reasons.¹⁰

10. As recently as November 9, 2023, this Court has held the monthly status conferences by videoconference.¹¹

⁸ *Id.* at 5.

⁹ ECF No. 2796 (motion); ECF No. 2797 (brief).

¹⁰ *See* Objection of Edwin Fuentes Vazquez and Brenda Hernaiz Trinidad (ECF No. 2780) (objecting on grounds that the MSA excluded qualified injury claims established by the FDA); Objection of Mary Ann Spiekmeier and the Estate of Lawrence J. Spiekermeier (ECF No. 2804) (objecting on grounds that the proposed MSA creates an inherent conflict for attorneys). It should be noted that Plaintiff King formally expressed support for the objection of Plaintiff Vazquez and Plaintiff Trinidad,

¹¹ ECF No. 2326.

11. The principles of fairness requires this Court to hear from any plaintiff who wishes to object to the proposed MSA.

For the reasons stated herein, Plaintiff King prays the Court grant the relief requested herein.

Dated: May 29, 2024.

Respectfully Submitted,

/s/ Derrick Martin King

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed via the Court's CM/ECF system. Parties and all counsel of record may access and download the filing via the CM/ECF system or via MDL Centrality.

Dated: May 29, 2024.

/s/ Derrick Martin King

DERRICK MARTIN KING

Pro se Plaintiff